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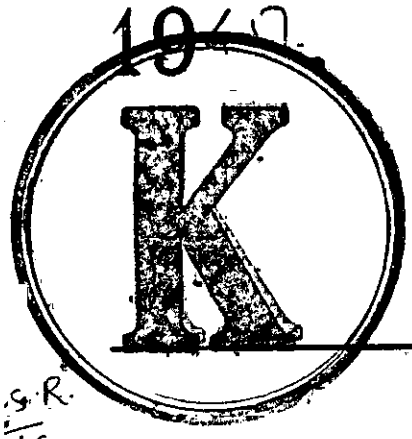

File No. B. Money : Lenders/47
Pts I & ~~II~~

Legal **DEPARTMENT**

B **BRANCH**

S.R. 5/6.

Subject:—

P 61 E

A Bill to regulate the transactions of money-lending in the Province of Bombay.

L. A. Bill. No. XV of 1946.

Bom. Act No. XXXI of 1947.

File No. B. Money-Lenders/47
Pts I & II.

Std. Sectt. Slip 24 Engg.

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MRP.
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25/5

Office of the R.L.A.

A requisite draft Bill, settled in consultation with Secretary R.D. is sent herewith.

2. Clause 2(10)(iii). Since a body corporate carrying on the business of money lending would be a bank within the meaning of section 277F of the Indian Companies Act, 1913, the reference to that expression has been changed to a bank.

3. The Bill as drafted does not require to be divided into Chapters. Clauses 3 to 5 of the 1938 Bill relating to powers of competent Courts have been deleted, since it is now desired that ordinary Courts should have jurisdiction under the present Bill.

4. Clause 14(1)(ii)(b). In the case of an undivided Hindu Family, a bank or an unincorporated body, only the person responsible for the management of the business is disqualified.

5. Clause 19. This has been recast on the lines of section 13 of D.A.R. Act, 1879.

6. Clause 30 of the 1938 Bill has been deleted as being unnecessary in view of clause 23.

7. Clause 33 has been slightly amplified to cover cases of molestation by unreasonable and persistent demands for repayment of a loan or payment of interest, or doing any act calculated to annoy or intimidate a debtor.

8. A new clause 35 has been added to provide that in the case of an undivided Hindu family, a bank or an unincorporated body, the person responsible for the management of the business of such family, bank or body, shall be deemed to be guilty of an offence under this Act.

9. Clauses 36 and 39 have been inserted under instructions from Secretary R.D.

10. The subject-matter of the Bill falls under entries 1,2,27,37,38 and 54 in List II and entries 1,2,4,5,8 and 10 in List III, in the Seventh Schedule of the Government of India

Act -

Act, 1935. As the provisions contained in clauses 21,24,29 and 36 are repugnant to the provisions contained in the Civil Procedure Code, and those contained in clauses 23 and 25 are repugnant to the provisions of the Indian Contract Act, 1872, and those contained in clauses 32 to 35 are repugnant to the provisions of the Code of Criminal Procedure and the Indian Penal Code, which are existing Indian laws relating to concurrent matters, it will be necessary to reserve the Bill for the consideration of the Governor General under section 107(2) of the Government of India Act, 1935. The Bill does not require any sanction or recommendation under the said Act, nor does it affect any special responsibility of the Governor.

The R.D. will no doubt attach a revised Statement of Objects and Reasons.

Sd. P.N.Moos
10/8/46

Remembrancer of Legal Affairs.

U.R.to R.D.,No.338-P, dated the 10th August 1946.

MRP.
22/5/56.

Legal Department,
Bombay Castle, 14th April 1947.

From

D.V.Vyas, Esquire, I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to regulate the transactions of money-lending in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to regulate the transactions of money-lending in the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 11th February 1947 and on the 28th February 1947, respectively.

2. None of the provisions of the Bill affect any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a), (b), (c) or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 1, 2, 27, 37, 38 and 54 in List II and entries 1, 2, & 4,5,8 and 10 in List III in the Seventh Schedule to the Government of India Act, 1935.

4. As the provisions contained in clauses 21, 24, 29 and 36 are repugnant to the provisions contained in the Code of Civil Procedure, 1908 and those containedin clauses 22 23 and 25 are repugnant to the provisions of the Indian Contract Act, 1872, and those contained in clauses 32 to 35 are repugnant to the provisions of the Code of Criminal Procedure 1898, and the Indian Penal Code, which are existing Indian laws relating to entries 4, 10, 2 and 1 in the Concurrent

Legislative

Legislative List, it would be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

5. I am also to forward herewith six copies of each of the items Nos.1 to 4 and two copies of item No.5 of the papers noted in the margin.

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	Nos.1 to 4 and two copies of item No.5 of the papers noted in the margin.
2. Report of the Select Committee together with the Bill as amended by the Select Committee.	
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
4. Bill as read for the third time and passed by the Bombay Legislative Council	
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 3rd, 5th, 6th and 18th September, 7th October 1946 and 11th February 1947 and of the Bombay Legislative Council dated the 28th February 1947.	

I have the honour to be,

Sir,

Your most obedient servant,

Sd. D.V.Vyas,

Secretary to the Government of Bombay,

Legal Department.

Through

The Secretary to the Government of Bombay,

Revenue Department.

MRP.
22/5/56.

No.G.S.1310.
Office of the Governor's Secretary,
Government House,
Bombay, 19th April 1947.

From

D.Symington, Esquire, C.I.E.,I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislative Assembly. Council.

Subject:- The Bombay Money-lenders Bill, 1946.

Sir,

With reference to the above Bill, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 11th and 28th February 1947 respectively, I am directed to state, for the information of the Honourable the Speaker President that as the provisions contained in clauses 21,24, 29 and 36 are repugnant to the provisions contained in the Code of Civil Procedure, 1908, and those contained in clauses 23 and 25 are repugnant to the provisions of the Indian Contract Act, 1872, and those contained in clauses 32 ~~and~~ to 35 are repugnant to the provisions of the Code of Criminal Procedure, 1898, and the Indian Penal Code, which are existing Indian laws relating to entries 4, 10, 2 and 1 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935, it will be necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Act. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, to declare that ~~he~~ he reserves the Bill for the consideration of the Governor -General.

Your obedient servant,

Sd. D. Symington.

Secretary to the Governor of Bombay.

No.G.S.1310.
Office of the Governor's Secretary,
Government House,
Bombay, 19th April 1947.

Copy forwarded with compliments to:-

The Secretary to Government, Legal Department, with reference to his letter No.3614, dated the 14th April 1947.

The Secretary to Government, Revenue Department, with reference to his endorsement No.2770-H/45, dated the 15th April 1947.

By order of the Governor of Bombay,

Sd. D.Symington
Secretary to the Governor of Bombay.

RP.
12/5/56.

No.G.S.1916.

Office of the Governor's Secretary,

Government House,

Bombay, 4th June 1947.

From

D. Symington, Esquire, C.I.E., I.C.S.,

Secretary to the Governor of Bombay.

To

The Secretary to Government,

Legal Department.

Subject:- The Bombay Money-lenders Bill, 1946.

Sir,

With reference to the correspondence resting with this Office letter No.G.S.1852, dated the 29th May 1947, I am directed to forward herewith the authentic copy of the Bombay Money-lenders Bill, 1946, with His Excellency the Governor-General's assent signified thereon.

Yours obedient servant,

Sd. Ramos,

For Secretary to the Governor of Bombay.

MRP.
22/5/56.

BILLS.

A Bill to regulate the transactions of money-lending in the Province of Bombay.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No.488-L.

Council Hall, Poona, 18th August 1946.

Memorandum from the Revenue Department No.2770-H/45, dated the 18th August 1946.- Transferring for necessary action, the papers relating to a Bill to regulate the transactions of money-lending in the Province of Bombay.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 19th August 1946, as Bill No.XV of 1946.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 21st August 1946.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay,

Sd. K.M.Chitnvis,

Assistant Secretary to the Government of Bombay, Legal Department.

To

The Manager, Government Central Press, Bombay (with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

The Revenue Department,
*The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Information,
) with a copy of the Bill and S.O.R.

*With five extra copies of the Bill.

MRP.
22/8/46.

Acts.

Publication of the Bombay Money-lenders Act, 1946.

GOVERNMENT OF BOMBAY.

Legal Department.

Resolution No.5740.

Bombay Castle, 31st May, 1947.

Letter to the Secretary to the Governor, No.3614, dated the 14th April 1947.

Letter from the Secretary to the Governor, No.G.S.1852, dated the 29th May 1947.

"With reference to the correspondence resting with my endorsement No.G.S.1310, dated the 19th April 1947, I am directed to inform you that intimation has been received from the Secretary to the Governor-General (Public) that His Excellency the Governor-General has assented to the Bombay Money-lenders Bill, 1946, on the 27th May 1947".

RESOLUTION:- The law should be published as Bombay Act No.XXXI of 1947 in the Bombay Government Gazette, dated the 31st May 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Revenue Department with reference to the memorandum from that Department No.2770-H/45, dated the 18th August ~~1945~~ 1946.

By order of the Governor of Bombay,

Sd. P.M.Lad,
Secretary to Government.

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).

The Revenue Department,
The Oriental Translator to Government,
The Secretary to the Bombay Legislative Council,
The Secretary to the Bombay Legislative Assembly,
The Director of Publicity, Bombay,
} with a copy of the Act.

---

*With five extra copies of the Act.

MRP.
22/5/56.

L. A. BILL No. XV OF 1946.

(A Bill to regulate the transactions of money-lending in the Province of Bombay).

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider L. A. Bill No. XV of 1946 (A Bill to regulate the transactions of money-lending in the Province of Bombay) have the honour to report as follows :—

We have carefully considered the Bill and have made a few changes therein. The reasons for the changes are given below against the clauses in which they occur.

Clause 2.—We do not think that advances or loans given without interest should come within the purview of this Bill. We have accordingly amended the definition of the term " loan " by adding the words " at interest " after the word " advance."

We also do not think that commercial and business transactions and advances to traders should be included within the scope of this Bill. We have accordingly exempted advances to traders from the definition of " loan," except for the purposes of sections 23 and 25. We have added a definition of the term " trader."

We have removed the definition of the term " recognised language " from clause 19 and included it in this clause.

**Note.*—The signature of Mr. S. M. Hasan will be notified when received.

MO-III Bk Hb 183—1

Clause 9.—We have suggested that the licence should be valid up to 31st July instead of up to 31st March so as to make the period of the licence co-extensive with the period of the revenue year. As most of the credit transactions take place in March, the proposed change will enable the licensees to complete their loan transactions well in advance of the date of expiry of the current licences.

Clause 18.—We consider that the statement which a money-lender has to deliver to the debtor within 30 days from the date on which a loan is made should be in any recognised language and not in the language in which the money-lender keeps his accounts. We have accordingly substituted the words " any recognised language " for the words " the language in which he keeps his accounts " occurring in sub-clause (2) (*a*) (*i*) of this clause.

We have also added a new sub-clause (4) to the clause providing that no money-lender shall accept from a debtor any article as pawn, pledge or security for a loan without giving him a plain signed receipt containing prescribed particulars for the same.

Clause 19.—We have substituted the words " deliver or cause to be delivered " for the word " furnish " at both places in sub-clause (1) in order to bring the wording of this clause in line with the wording in clause 18.

We have taken out of this clause the definition of the term " recognised language " and included it in the definition clause 2. As a consequence of this amendment, the provision " such statement shall be supplied in any recognised language if the debtor pays a fee of Rs. 2.....of the Court " occurring at the end of sub-clause (2) have been deleted and the words " the language in which the money-lender keeps his accounts " occurring in sub-clauses (1) and (2) of this clause have been replaced by the words " in the recognised language ".

Clause 25.—Sub-clause (1) of this clause gives the Provincial Government power to fix maximum rates of interest in respect of loans for any local area. In order to enable the Provincial Government to fix different maximum rates of interest for business transactions we have added the words " or class of business of money-lending " after the words " for any local area " in this sub-clause.

We further think that the maximum rate of interest should not exceed 6 per cent. in the case of secured debts and 9 per cent. in the case of unsecured debts. We have accordingly added a proviso to sub-clause (1) of this clause.

Clause 29.—We consider that the three years' period provided for in the proviso to this clause for the re-opening of transactions is rather short. We have accordingly increased the period to six years.

Clause 33 (1).—We have deleted clause (*d*) of the Explanation as we consider it vague and unnecessary in view of clauses (*a*), (*b*) and (*c*).

Clause 34.—We consider that while a punishment by way of fine may be adequate for first and second offences, subsequent offences should be made punishable both with imprisonment and fine. We have accordingly added the words " and with fine " at the end of sub-clause (*c*) of this clause so that the cost of investigation may be met from the fine.

Clause 39.—We consider that the rules made by Government under this section should not only be subject to previous publication but should also be laid before

each of the Chambers of the Provincial Legislature. We have accordingly inserted a new sub-clause (4) in this clause.

(Signed) MORARJI R. DESAI.
(,,) D. N. DESAI.
(,,) VAIKUNTH L. MEHTA.
(,,) S. S. SHASTRI.
(,,) BHAVANJI A. KHIMJI.
(,,) K. B. DUNDUR.
(,,) SHIVSHANKER C. BHATT.
(,,) CHANDULAL P. PARIKH.
(,,) NAVAL A. PATIL.
(,,) D. M. BIDKAR.
(,,) K. A. DAWOOR.
(,,) B. D. DESHMUKH.
(,,) J. H. SHAMSUDDIN
(Subject to a minute of dissent).
(,,) AHMED A. PATEL
(Subject to a minute of dissent).

(Joint Minute of Dissent by Mr. J. H. Shamsuddin, M.L.A., and Mr. Ahmed A. Patel, M.L.A.)

We the following members of the Select Committee appointed to consider L. A. Bill No. XV of 1946 (A Bill to regulate the transactions of money-lending in the Province of Bombay) have the honour to differ from the majority of the members of the Select Committee in the matters stated below and to present this minute of dissent in that connection :—

We still hold and affirm that the modern institution of interest should be completely abolished, and without prejudice to this fundamental principle we have subscribed to the report of the Select Committee, except to the extent shown below :—

We differ from the definition of " recognised language " adopted by the Select Committee. We think that the scope of the definition should be widened to include Urdu as one of the languages along with Marathi, Gujrati and Kannada for Greater Bombay and other parts of the Province as well, as proposed by the Select Committee.

Urdu is one of the recognised languages in the Province for several purposes. Rule 2 (*o*) of the Bombay Legislative Assembly Rules recognises this language as one of the official languages in which the proceedings are allowed to be conducted.

Government have long ago included this language as one of the recognised languages of the Province for educational and other purposes.

Under the provisions of the Act, i.e., clause 18 as amended by the Select Committee, the money-lender is required to deliver to the debtor and the Assistant Registrar within thirty days of the loan a statement about the loan with necessary particulars in the recognised language. There are a number of money-lenders in this Province who keep their accounts in Urdu and may not be so conversant with any other language as to discharge satisfactorily their obligations under the proposed statutory provisions. They generally carry on their business on small scale and maintain their accounts themselves without engaging clerks for the purpose. As the extent of the business turn-over would not permit them to do so, these petty money-lenders will be subjected to inconvenience and hardship if they are compelled to deliver the statement in any language other than Urdu.

Unfortunately a considerable number of borrowers in the Province belong to Urdu-knowing section of the population. They are not also well conversant with any other language than Urdu. If they are to be rest content with a statement about their debt under clause 18 in a language other than Urdu when the money-lender is to deliver the accounts in the regional language, it is but natural to expect the other borrowers to accept the statement referred to in clause 18 in Urdu language, if he does not know it and the money-lender generally maintains his account in that language.

Recognition of Urdu as one of the recognised languages for the purpose of this section will not entail any hardship on the borrowers not conversant with Urdu as the money-lenders will be compelled to supply to the debtors a statement of the loan with a requisite particulars in the language of the debtors if required on payment of a nominal fee, and sub-clauses (1), (2) and (3) of clause 19 can suitably be amended for the purpose.

Hence we propose that Urdu should be accorded a recognition along with other vernacular languages of the Province for the purpose of this Act.

(Signed) J. H. SHAMSUDDIN.

30th September 1946. (,,) AHMED A. PATEL.

Note.—Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.

L. A. BILL No. XV OF 1946.

A Bill to regulate the transactions of money-lending in the Province of Bombay.

(As amended by the Select Committee.)

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending in the Province of Bombay; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Money-lenders Act, 1946.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) " bank " means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India ;

VII of 1913.

(*2*) " business of money-lending " means the business of advancing loans whether or not in connection with or in addition to any other business ;

(*3*) " capital " means a sum of money which a money-lender invests in the business of money-lending ;

(*4*) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession ;

VII of 1913.

(*5*) " co-operative society " means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to co-operative societies ;

Bom. VII of 1925. II of 1912.

(*6*) " interest " includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force ;

(*7*) " licence " means a licence granted under this Act ;

(*8*) " licence fee " means the fee payable in respect of a licence ;

(*9*) "loan" means an advance *at interest* by way of credit, whether of money or in kind, but does not include—

(*a*) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society;

(*b*) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object; XXI of 1860.

(*c*) a loan advanced by Government or by any local authority authorised by Government;

(*d*) a loan advanced by a co-operative society;

(*e*) a loan to, or by a scheduled bank;

(*f*) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note; XXVI of 1881.

(*g*) *except for the purposes of sections 23 and 25, a loan to a trader;*

(*10*) "money-lender" means—

(*i*) an individual or

(*ii*) an undivided Hindu family or

(*iii*) a bank or

(*iv*) an unincorporated body of individuals,

who or which—

(*a*) carries on the business of money-lending in the Province; or

(*b*) has his or its principal place of such business in the Province;

(*11*) "prescribed" means prescribed by rules made under this Act;

(*12*) "principal" means in relation to a loan the amount actually advanced to the debtor;

(*13*) "Province" means the Province of Bombay;

(*13A*) "*recognised language*" *means in Greater Bombay Marathi or Gujarati and elsewhere the language of the Court;*

(*14*) "register" means a register of money-lenders maintained under section 4;

(*15*) "rules" means rules made under this Act;

(*16*) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934; II of 1934.

(*17*) "suit to which this Act applies" means any suit or proceeding—

(*a*) for the recovery of a loan made after the date on which this Act comes into force;

(*b*) for the enforcement of any security taken, or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or

(*c*) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date ;

(*18*) "*trader*" *means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable, and includes—*

a wholesale or retail merchant,
a commission agent,
a broker,
a manufacturer,
a contractor,
a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation.—For the purposes of this clause an "artisan" means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

Appointment of Registrar General, Registrars and Assistant Registrars.

3. The Provincial Government may, by notification in the Official Gazette appoint such persons, whether public officers or not, as it thinks proper, to be a Registrar General, Registrars and Assistant Registrars of money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

Register of money-lenders.

4. Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed.

Money-lender not to carry on business of money-lending except for area under licence and except in accordance with terms of licence.

5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

Application for licence.

6. (*1*) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Assistant Registrar of the area within the limits of which he intends to carry on the business of money-lending. Such application shall contain the following particulars, namely :—

(*a*) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business ;

(*b*) if the application is by or on behalf of—

(*i*) an individual, the name and address of such individual,

(*ii*) an undivided Hindu family, the names and addresses of the manager and the adult coparceners of such family,

(*iii*) a bank, the names and addresses of the directors, manager or principal officer managing it,

(*iv*) an unincorporated body of individuals, the names and addresses of such individuals;

(*c*) the area and the place or principal place of the business of money-lending in the Province;

(*d*) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on;

(*e*) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the bank or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name;

(*f*) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

(*2*) The application shall be in writing and shall be signed—

(*a*) (*i*) if the application is made by an individual, by the individual;

(*ii*) if the application is made on behalf of an undivided Hindu family, by the manager and the adult coparceners of such family;

(*iii*) if the application is made by a bank or unincorporated body by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business; or

(*b*) by an agent authorised in this behalf by a power of attorney by the individual money-lender himself, or the family, or the bank or the unincorporated body, as the case may be.

(*3*) The application shall also contain such other particulars as may be prescribed.

Grant of licence and entry in Register.

7. On the receipt of an application under section 6 and after making a summary inquiry in accordance with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any,

as he deems fit, grant the applicant a licence in such form and subject to such conditions as may be prescribed, on payment in the prescribed manner of a licence fee of Rs. 5 and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

Refusal of issue of licence.

8. (*1*) The grant of a licence shall not be refused except on any of the following grounds :—

(*a*) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is disqualified from holding a licence ;

(*b*) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence ;

(*c*) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act ;

(*d*) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has—

(*i*) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or

(*ii*) been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code..

XLV of 1860.

(*2*) The Registrar shall, before refusing a licence under sub-section (*1*), record the evidence adduced before him and his reasons for such refusal.

(*3*) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (*1*) to the Registrar General, whose decision shall be final.

Term of licence.

9. A licence shall be valid from the date on which it is granted to the 31st day of [March] *July* following.

Stay of suits by money-lenders not holding licence.

10. (*1*) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence.

(*2*) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees payable by him under

this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding Rs. 500, as the Court may direct:

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(*3*) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(*4*) If the money-lender fails to produce the licence required under sub-section (*2*) within the period specified therein or within such period as may be extended under sub-section (*3*), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(*5*) Nothing in this section shall affect—

(*a*) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(*b*) the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realise the property of a money-lender.

Bom. XXI of 1881. Bom. VI of 1888. III of 1909. V of 1920. VII of 1913.

Entry in register and grant of licence to a money-lender directed to obtain licence under section 10.

11. Any money-lender who is required under sub-section (*2*) of section 10 to produce a licence shall make an application to the Registrar through the Assistant Registrar in the manner specified in section 6 and on receipt of such application the Registrar may, subject to the provisions of section 8, and after making such inquiry as he deems fit, grant the money-lender on payment of the arrears of licence fee, and the penalty, if any, directed by the Court to be paid, a licence in the form and subject to the conditions specified in section 7 and direct the Assistant Registrar to enter the name of the money-lender in the register.

Application for cancellation of licence.

12. (*1*) Any person may, during the currency of a licence, file an application, to the Registrar General for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filing his application the said person shall deposit such amount not exceeding Rs. 100 as the Registrar General may deem fit.

(2) On the receipt of such application and deposit the Registrar General shall hold an inquiry and if he is satisfied that the money-lender has been guilty of such act or conduct he may direct the Registrar to cancel the licence of the moneylender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

Registrar General, Registrar and Assistant Registrar to have powers of Civil Court.

13. For the purposes of section 7 the Registrar and Assistant Registrar, and for the purposes of section 12 the Registrar General, shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :—

V of 1908.

(a) enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents and material objects ;

(c) issuing commissions for the examination of witnesses ; and

(d) proof of facts by affidavits.

Court's power to cancel or suspend a licence.

14. (1) (i) A Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) a Court trying a suit to which this Act applies, if satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that all the licences held by such money-lender in the Province be cancelled or suspended for such time as it may think fit ; and

(b) may, if it thinks fit, declare any such money-lender, or if any money-lender is an undivided Hindu family, a bank or an unincorporated body, such family, bank or body and also any person responsible for the management of the business of money-lending carried on by such family, bank or body, to be disqualified from holding any licence in the Province for such time as the Court may think fit.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted for the purpose of entering such particulars in the registers :

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(*3*) Any licence required by a Court for endorsement in accordance with sub-section (*2*) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable, on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

(*4*) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

No compensation for suspension or cancellation of licence.

15. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any licence fee.

Persons debarred from doing business during period of suspension or cancellation of licence.

16. A person whose licence has been suspended or cancelled in accordance with the provisions of this Act shall, during the period of suspension or cancellation, as the case may be, be disqualified from holding any licence in the Province.

Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.

17. No person whose licence has been endorsed under section 14 or who has been disqualified from holding a licence shall apply for, or be eligible to hold a licence, without giving particulars of such endorsement or disqualification.

Duty of money-lender to keep accounts, and furnish copies.

18. (*1*) Every money-lender shall keep and maintain a cash book and a ledger in such form and in such manner as may be prescribed.

(*2*) Every money-lender shall—

(*a*) deliver or cause to be delivered—

(*i*) to the debtor within 30 days from the date on which a loan is made, a statement in [the language in which he keeps his accounts] *any recognised language* showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged;

(*ii*) to the Assistant Registrar, within the said period a copy of the said statement;

(*b*) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or re-assign every assignment given by the debtor as security for the loan.

(*3*) No money-lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment.

(*4*) *No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.*

Furnishing of statement of accounts and copies thereof by money-lender.

19. (*1*) Every money-lender shall [furnish] *deliver or cause to be delivered* every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show—

(*i*) the amount of principal and the amount of interest, separately, due to the money-lender ;

(*ii*) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made ;

(*iii*) all payments credited first in the account of interest, and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal ;

(*iv*) the amount of principal remaining unpaid and the interest thereon.

The statement shall be signed by the money-lender, or his agent, and shall be in [the language in which the accounts of the money-lender are ordinarily kept] *any recognised language*. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed.

The money-lender shall on or before the aforesaid date [furnish] *deliver or cause to be delivered* a copy of each such statement to the Assistant Registrar.

(*2*) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in [the language in which the accounts of the money-lender are ordinarily kept] *any recognised language*, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (*1*). [Such statement shall be supplied in any recognised language if the debtor pays a fee of Rs. 2.

For the purposes of this sub-section in Greater Bombay "recognised language" means Marathi or Gujarati and elsewhere the language of the Court.]

(3) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purposes of this section "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Debtor not bound to admit correctness of accounts.

20. A debtor to whom a statement of accounts has been furnished under section 19 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the account.

Procedure of Court in suits regarding loans.

21. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(*a*) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of sections 18 and 19;

(*b*) if the Court finds that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 18 or section 19, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

Provisions of certain sections not to apply to loans made by bank, or unincorporated body exempted by Government.

22. Nothing in sections 18 to 21 shall apply to loans advanced by any bank or unincorporated body which the Provincial Government may by notification in the *Official Gazette* exempt from the operation of those sections.

Power of Court to limit interest recoverable in certain cases.

23. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

Power of Court to direct payment of decretal amount by instalments.

24. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

V of 1908.

Limitation on rates of interest.

25. (*1*) The Provincial Government may from time to time by notification in the *Official Gazette* fix the maximum rates of interest for any local area *or class of business of money-lending* in respect of secured and unsecured loans.

Provided that the maximum rate of interest shall not exceed 6 per cent. per annum in the case of secured loans and 9 per cent. per annum in the case of unsecured loans.

(*2*) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (*1*) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

Prohibition of charge for expenses on loans by money-lenders.

26. No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of 1882.

Notice and information to be given on assignment of loan.

27. (*1*) Where a loan advanced, whether before or after the date on which this Act comes into force, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(*a*) give the assignee notice in writing that the loan, interest, agreement or security is affected by the operation of this Act;

(*b*) supply to the assignee all information necessary to enable him to comply with the provisions of this Act; and

(*c*) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

Application of Act as respects assignees.

28. (1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

Reopening of transactions.

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

(*a*) reopen any transaction, or any account already taken between the parties;

(*b*) take an account between the parties;

(*c*) reduce the amount charged to the debtor in respect of any excessive interest;

(*d*) if on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount:

Provided that in the exercise of these powers, the Court shall not—

(*i*) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than [three] *six* years from the date of the suit;

(*ii*) do anything which affects any decree of a Court.

Explanation.—For the purpose of this section "excessive interest" means interest at a rate which contravenes any of the provisions of section 25.

Inquiry for taking accounts and declaring the amount due.

30. (1) Any debtor may make an application at any time to the Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 18 to 29.

Deposit in Court of money due to money-lender.

31. (1) At any time a debtor may tender to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both.

(2) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue if any towards the principal.

(4) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue if any towards the principal.

Entry of wrong sum in bond etc., to be an offence.

32. (1) No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 or with imprisonment of either description which may extend to six months or with both.

Penalty for molestation.

33. (1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs, 500 or with both.

Explanation.—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person, [or]

[(*d*) makes unreasonable and persistent demands on such other person for repayment of a loan or payment of interest thereon,]

shall be deemed to molest such other person:

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

(2) Notwitnstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable. V of 1898.

General provision regarding penalties.

34. Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, be punishable—

(*a*) for the first offence with fine which may extend to Rs. 200,

(*b*) for the second offence with fine which may extend to Rs. 500, and

(*c*) for any subsequent offence with rigorous imprisonment which may extend to three months *and with fine.*

Offences by corporations etc.

35. If the person contravening any of the provisions of this Act is an undivided Hindu family or a bank or an unincorporated body, the person responsible for the management of the business of such family, bank or body shall be deemed to be guilty of such contravention.

Arrest and imprisonment in execution of decree for money, against agricultural debtors, abolished.

36. Notwithstanding any law for the time being in force, no debtor who cultivates land personally and whose debts do not exceed Rs. 15,000 shall be arrested or imprisoned in execution of a decree for money passed in favour of a money-lender, whether before or after the date on which this Act comes into force.

Explanation.—"To cultivate personally" has the meaning assigned to it in clause (11) of section 2 of the Bombay Tenancy Act, 1939. Bom. XXIX of 1939.

Every officer to be public servant.

37. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Provisions of Bom. XXVIII of 1939 saved.

38. Nothing in this Act shall affect any of the provisions of the Bombay Agricultural Debtors Relief Act, 1939, and no Court shall entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act. Bom. XXVIII of 1939.

Rules.

39. (*1*) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters:—

(*a*) the form of the register under section 4;

(*b*) the form of the application for a licence and the further particulars to be included therein under section 6 ;

(*c*) the form and conditions of the licence, the manner of payment of licence fee and the procedure for a summary inquiry under section 7 ;

(*d*) the form of cash book and ledger and the manner in which they should be maintained under sub-section (*1*), *and the other particulars to be prescribed under sub-section* (*4*), of section 18 ;

(*e*) the form of the statement of accounts to be furnished and the date before which it is to be furnished under sub-section (*1*), the fee to be paid under sub-section (*2*), and the sum of expenses to be paid under sub-section (*3*), of section 19 ;

(*f*) the form of application and the fee to be paid under sub-section (*1*) of section 30 ;

(*g*) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(*3*) The rules made under this section shall, subject to the condition of previous publication, be published in the Official Gazette.

(*4*) *The rules made under this section shall be laid before each Chamber of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Chambers concur and such rules shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly.*

STATEMENT OF OBJECTS AND REASONS.

If a concerted attempt is to be made to improve the economic condition of the bulk of the rural population and the poorer sections of the population in towns and cities, it is necessary that adequate measures should be taken to protect these persons from exploitation by other sections of the community. The poorer individual is at present unable to resist the economic forces that surround him; and unless the State intervenes and protects his legitimate economic rights, it will not be possible to restore to him the keenness and initiative which are essential for increased productive effort on his part. In the case of the agrarian population the Agricultural Debtors Relief Act will adjust and liquidate existing debts, but controlled credit must be provided in future for short-term and long-term agricultural finance in order to secure that the agrarian population will not get hopelessly into debt again. Similarly, in towns and cities a large section of the labour and lower middle class population are exploited by many unscrupulous moneylenders and it is therefore necessary to control the operations of the latter all over the Province.

2. A Bill to regulate the transactions of moneylenders in the Province of Bombay was introduced by the popular Government when it was in power in 1938; but this Bill could not be enacted before it left office in 1939. The present Bill is drafted mainly on the basis of the old Bill introduced in 1938 with a few changes considered necessary to secure more efficient control of the business of moneylending and expeditious disposal in the administration of the Act.

3. Broadly speaking, the provisions of the Bill aim at securing the following:—

(1) Registration and licensing of moneylenders (Clauses 3 to 17):

(2) Maintenance of accounts by licensed moneylenders in prescribed forms (Clause 18):

(3) Furnishing of periodical statements of accounts to debtors (Clause 19):

(4) The enforcement of the rule of *damdupat* (Clause 23):

(5) Limitation of the rates of interest (Clause 25):

(6) Prohibition against taking any unlawful charges for expenses, etc. (Clause 26):

(7) Making the provisions of the Act applicable to persons to whom moneylenders may assign their interests in the loans after the coming into force of this Act (Clauses 27 and 28):

(8) Applications to Court by debtors for taking accounts and for having amounts due from them determined (Clause 30):

(9) Provision to entitle a debtor to deposit at any time in a court of law an amount in part or full payment of the loan to be paid to his creditor (Clause 31):

(10) Prohibition against leaving blanks or omitting to enter or incorrectly entering the amount of the loan in any document (Clause 32):

(11) Protection of debtors from molestation and intimidation (Clause 33): and

(12) Freedom from arrest or imprisonment in execution of a money decree so far as agricultural debtors are concerned (Clause 36).

MORARJI DESAI.

Dated 18th August 1946.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XV OF 1946]

(As amended by the Select Committee.)

A Bill to regulate the transactions of money-lending in the Province of Bombay

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[Mr. MORARJI R. DESAI, M.L.A.]

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PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

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The following Act of the Bombay Legislature having been assented to by the Governor General on the 27th May 1947 is hereby published for general information,

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXXI OF 1947.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 31st May 1947.)

An Act to regulate the transactions of money-lending in the Province of Bombay.

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending in the Province of Bombay; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Money-lenders Act, 1946.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "bank" means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India; VII of 1913.

(*2*) "business of money-lending" means the business of advancing loans whether or not in connection with or in addition to any other business;

(*3*) "capital" means a sum of money which a money-lender invests in the business of money-lending;

(*4*) "company" means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession; VII of 1913.

(5) "co-operative society" means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to co-operative societies; Bom. VII of 1925. II of 1912

(6) "interest" includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force;

(7) "licence" means a licence granted under this Act;

(8) "licence fee" means the fee payable in respect of a licence;

(9) "loan" means an advance at interest by way of credit, whether of money or in kind, but does not include—

(a) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society;

(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object; XXI of 1860.

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) a loan to, or by a scheduled bank;

(f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note; XXVI of 1881.

(g) except for the purposes of sections 23 and 25, a loan to a trader;

(10) "money-lender" means—

(i) an individual or

(ii) an undivided Hindu family or

(iii) a bank or

(iv) an unincorporated body of individuals,

who or which—

(a) carries on the business of money-lending in the Province; or

(b) has his or its principal place of such business in the Province;

(11) "prescribed" means prescribed by rules made under this Act;

(12) "principal" means in relation to a loan the amount actually advanced to the debtor;

(13) "Province" means the Province of Bombay;

(13A) "recognised language" means in Greater Bombay Marathi or Gujarati and elsewhere the language of the Court;

(14) "register" means a register of money-lenders maintained under section 4;

(15) "rules" means rules made under this Act;

(16) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934; II of 1934.

(17) "suit to which this Act applies" means any suit or proceeding—

(a) for the recovery of a loan made after the date on which this Act comes into force;

(5) "co-operative society" means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to co-operative societies; Bom. VII of 1925. II of 1912

(6) "interest" includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force;

(7) "licence" means a licence granted under this Act;

(8) "licence fee" means the fee payable in respect of a licence;

(9) "loan" means an advance at interest by way of credit, whether of money or in kind, but does not include—

(a) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society;

(b) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object; XXI of 1860.

(c) a loan advanced by Government or by any local authority authorised by Government;

(d) a loan advanced by a co-operative society;

(e) a loan to, or by a scheduled bank;

(f) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note; XXVI of 1881.

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(ii) an undivided Hindu family or

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who or which—

(a) carries on the business of money-lending in the Province; or

(b) has his or its principal place of such business in the Province;

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(14) "register" means a register of money-lenders maintained under section 4;

(15) "rules" means rules made under this Act;

(16) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934; II of 1934.

(17) "suit to which this Act applies" means any suit or proceeding—

(a) for the recovery of a loan made after the date on which this Act comes into force;

(*b*) for the enforcement of any security taken, or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date ; or

(*c*) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date ;

(*18*) " trader " means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable , and includes—

a wholesale or retail merchant,
a commission agent,
a broker,
a manufacturer,
a contractor,
a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation.—For the purposes of this clause an " artisan " means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

Appointment of Registrar General, Registrars and Assistant Registrars.

3. The Provincial Government may, by notification in the Official Gazette appoint such persons, whether public officers or not, as it thinks proper, to be a Registrar General, Registrars and Assistant Registrars of money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

Register of money-lenders.

4. Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed.

Money-lender now to carry on business of money-lending except for area under licence and except in accordance with terms of licence.

5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

Application for licence.

6. (*1*) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Assistant Registrar of the area within the limits of which he intends to carry on the business of money-lending. Such application shall contain the following particulars, namely :—

(*a*) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business ;

(*b*) if the application is by or on behalf of—

(*i*) an individual, the name and address of such individual,

(*ii*) an undivided Hindu family, the names and addresses of the manager and the adult coparceners of such family,

(*iii*) a bank, the names and addresses of the directors, manager or principal officer managing it,

(*iv*) an unincorporated body of individuals, the names and addresses of such individuals;

(*c*) the area and the place or principal place of the business of money-lending in the Province;

(*d*) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on;

(*e*) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the bank or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name;

(*f*) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

(*2*) The application shall be in writing and shall be signed—

(*a*) (*i*) if the application is made by an individual, by the individual;

(*ii*) if the application is made on behalf of an undivided Hindu family, by the manager and the adult coparceners of such family;

(*iii*) if the application is made by a bank or unincorporated body by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business; or

(*b*) by an agent authorised in this behalf by a power of attorney by the individual money-lender himself, or the family, or the bank or the unincorporated body, as the case may be.

(*3*) The application shall also contain such other particulars as may be prescribed.

Grant of licence and entry in register.

7. On the receipt of an application under section 6 and after making a summary inquiry in accordance with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any,

as he deems fit, grant the applicant a licence in such form and subject to such conditions as may be prescribed, on payment in the prescribed manner of a licence fee of Rs. 5 and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

Refusal of issue of licence.

8. (*1*) The grant of a licence shall not be refused except on any of the following grounds :—

(*a*) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is disqualified from holding a licence ;

(*b*) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence ;

(*c*) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act ;

(*d*) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has—

(*i*) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or

(*ii*) been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code.

XLV of 1860.

(*2*) The Registrar shall, before refusing a licence under sub-section (*1*), record the evidence adduced before him and his reasons for such refusal.

(*3*) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (*1*) to the Registrar General, whose decision shall be final.

Term of licence.

9. A licence shall be valid from the date on which it is granted to the 31st day of July following.

Stay of suits by money-lenders not holding licence.

10. (*1*) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence.

(*2*) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees payable by him under

this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding Rs. 500, as the Court may direct :

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(*3*) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(*4*) If the money-lender fails to produce the licence required under sub-section (*2*) within the period specified therein or within such period as may be extended under sub-section (*3*), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(*5*) Nothing in this section shall affect—

(*a*) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force ;

(*b*) the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realise the property of a money-lender. Bom. XXI of 1881. Bom. VI of 1888. III of 1909. V of 1920. VII of 1913.

Entry in register and grant of licence to a money-lender directed to obtain licence under section 10.

11. Any money-lender who is required under sub-section (*2*) of section 10 to produce a licence shall make an application to the Registrar through the Assistant Registrar in the manner specified in section 6 and on receipt of such application the Registrar may, subject to the provisions of section 8, and after making such inquiry as he deems fit, grant the money-lender on payment of the arrears of licence fee, and the penalty, if any, directed by the Court to be paid, a licence in the form and subject to the conditions specified in section 7 and direct the Assistant Registrar to enter the name of the money-lender in the register.

Application for cancellation of licence.

12. (*1*) Any person may, during the currency of a licence, file an application, to the Registrar General for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filing his application the said person shall deposit such amount not exceeding Rs. 100 as the Registrar General may deem fit.

(2) On the receipt of such application and deposit the Registrar General shall hold an inquiry and if he is satisfied that the money-lender has been guilty of such act or conduct he may direct the Registrar to cancel the licence of the money-lender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

Registrar General, Registrar and Assistant Registrar to have powers of Civil Court.

13. For the purposes of section 7 the Registrar and Assistant Registrar, and for the purposes of section 12 the Registrar General, shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :—

V of 1908.

(a) enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents and material objects ;

(c) issuing commissions for the examination of witnesses ; and

(d) proof of facts by affidavits.

Court's power to cancel or suspend a licence.

14. (1) (i) A Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) a Court trying a suit to which this Act applies, if satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that all the licences held by such money-lender in the Province be cancelled or suspended for such time as it may think fit ; and

(b) may, if it thinks fit, declare any such money-lender, or if any money-lender is an undivided Hindu family, a bank or an unincorporated body, such family, bank or body and also any person responsible for the management of the business of money-lending carried on by such family, bank or body, to be disqualified from holding any licence in the Province for such time as the Court may think fit.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted for the purpose of entering such particulars in the registers :

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(*3*) Any licence required by a Court for endorsement in accordance with sub-section (*2*) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable, on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

(*4*) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

No compensation for suspension or cancellation of licence.

15. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any licence fee.

Persons debarred from doing business during period of suspension or cancellation of licence.

16. A person whose licence has been suspended or cancelled in accordance with the provisions of this Act shall, during the period of suspension or cancellation, as the case may be, be disqualified from holding any licence in the Province.

Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.

17. No person whose licence has been endorsed under section 14 or who has been disqualified from holding a licence shall apply for, or be eligible to hold a licence, without giving particulars of such endorsement or disqualification.

Duty of money-lender to keep accounts, and furnish copies.

18. (*1*) Every money-lender shall keep and maintain a cash book and a ledger in such form and in such manner as may be prescribed.

(*2*) Every money-lender shall—

(*a*) deliver or cause to be delivered—

(*i*) to the debtor within 30 days from the date on which a loan is made, a statement in any recognised language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged;

(*ii*) to the Assistant Registrar, within the said period a copy of the said statement;

(*b*) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or re-assign every assignment given by the debtor as security for the loan.

(*3*) No money-lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment.

(*4*) No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.

Delivery of statement of accounts and copies thereof by money-lender.

19. (*1*) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show—

(*i*) the amount of principal and the amount of interest, separately, due to the money-lender ;

(*ii*) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made ;

(*iii*) all payments credited first in the account of interest, and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal ;

(*iv*) the amount of principal remaining unpaid and the interest thereon.

The statement shall be signed by the money-lender, or his agent, and shall be in any recognised language. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed.

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a copy of each such statement to the Assistant Registrar.

(*2*) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in any recognised language, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (*1*).

(3) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(4) For the purposes of this section "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Debtor not bound to admit correctness of accounts.

20. A debtor to whom a statement of accounts has been furnished under section 19 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the accounts.

Procedure of Court in suits regarding loans.

21. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(a) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of sections 18 and 19;

(b) if the Court finds that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 18 or section 19, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

Provisions of certain sections not to apply to loans made by bank, or unincorporated body exempted by Government.

22. Nothing in sections 18 to 21 shall apply to loans advanced by any bank or unincorporated body which the Provincial Government may by notification in the *Official Gazette* exempt from the operation of those sections.

Power of Court to limit interest recoverable in certain cases.

23. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

Power of Court to direct payment of decretal amount by instalments.

24. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

V of 1908.

Limitation on rates of interest.

25. (*1*) The Provincial Government may from time to time by notification in the *Official Gazette* fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

Provided that the maximum rate of interest shall not exceed 6 per cent. per annum in the case of secured loans and 9 per cent. per annum in the case of unsecured loans.

(*2*) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (*1*) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

Prohibition of charge for expenses on loans by money-lenders.

26. No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of 1882.

Notice and information to be given on assignment of loan.

27. (*1*) Where a loan advanced, whether before or after the date on which this Act comes into force, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(*a*) give the assignee notice in writing that the loan interest, agreement or security is affected by the operation of this Act;

(*b*) supply to the assignee all information necessary to enable him to comply with the provisions of this Act; and

(*c*) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

Application of Act as respects assignees.

28. (1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

Reopening of transactions.

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

(*a*) reopen any transaction, or any account already taken between the parties;

(*b*) take an account between the parties;

(*c*) reduce the amount charged to the debtor in respect of any excessive interest;

(*d*) if on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount:

Provided that in the exercise of these powers, the Court shall not—

(*i*) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;

(*ii*) do anything which affects any decree of a Court.

Explanation.—For the purpose of this section "excessive interest" means interest at a rate which contravenes any of the provisions of section 25.

Inquiry for taking accounts and declaring the amount due.

30. (1) Any debtor may make an application at any time to the Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(3) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 18 to 20.

Deposit in Court of money due to money-lender.

31. (1) At any time a debtor may tender to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both.

(2) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(3) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue if any towards the principal.

(4) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue if any towards the principal.

Entry of wrong sum in bond etc., to be an offence.

32. (1) No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(2) Whoever contravenes the provisions of sub-section (1) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 or with imprisonment of either description which may extend to six months or with both.

Penalty for molestation.

33. (1) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs. 500 or with both.

Explanation.—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing—

(a) obstructs or uses violence to or intimidates such other person, or

(b) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(c) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person,

shall be deemed to molest such other person:

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable. V of 1898.

General provision regarding penalties.

34. Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, be punishable—

(*a*) for the first offence with fine which may extend to Rs. 200,

(*b*) for the second offence with fine which may extend to Rs. 500, and

(*c*) for any subsequent offence with rigorous imprisonment which may extend to three months and with fine.

Offences by corporations etc.

35. If the person contravening any of the provisions of this Act is an undivided Hindu family or a bank or an unincorporated body, the person responsible for the management of the business of such family, bank or body shall be deemed to be guilty of such contravention.

Arrest and imprisonment in execution of decree for money, against agricultural debtors, abolished.

36. Notwithstanding any law for the time being in force, no debtor who cultivates land personally and whose debts do not exceed Rs. 15,000 shall be arrested or imprisoned in execution of a decree for money passed in favour of a money-lender, whether before or after the date on which this Act comes into force.

Explanation.—"To cultivate personally" has the meaning assigned to it in clause (11) of section 2 of the Bombay Tenancy Act, 1939. Bom. XXIX of 1939.

Every officer to be public servant.

37. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Provisions of Bom. XXVIII of 1939 saved.

38. Nothing in this Act shall affect any of the provisions of the Bombay Agricultural Debtors Relief Act, 1939, and no Court shall entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act. Bom. XXVIII of 1939.

Rules.

39. (*1*) The Provincial Government may make rules for carrying out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters:—

(*a*) the form of the register under section 4;

(*b*) the form of the application for a licence and the further particulars to be included therein under section 6 ;

(*c*) the form and conditions of the licence, the manner of payment of licence fee and the procedure for a summary inquiry under section 7 ;

(*d*) the form of cash book and ledger and the manner in which they should be maintained under sub-section (*1*), and the other particulars to be prescribed under sub-section (*4*), of section 18 ;

(*e*) the form of the statement of accounts to be furnished and the date before which it is to be furnished under sub-section (*1*), the fee to be paid under sub-section (*2*), and the sum of expenses to be paid under sub-section (*3*), of section 19 ;

(*f*) the form of application and the fee to be paid under sub-section (*1*) of section 30 ;

(*g*) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(*3*) The rules made under this section shall, subject to the condition of previous publication, be published in the Official Gazette.

(*4*) The rules made under this section shall be laid before each Chamber of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Chambers concur and such rule shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XV OF 1946.

A Bill to regulate the transactions of money-lending in the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

(As read for the third time and passed by the Legislative Council on the 28th February 1947.)

WHEREAS it is expedient to make better provision for the regulation and control of transactions of money-lending in the Province of Bombay; It is hereby enacted as follows :—

Short title, extent and commencement.

1. (*1*) This Act may be called the Bombay Money-lenders Act, 1946.

(*2*) It extends to the whole of the Province of Bombay.

(*3*) It shall come into force on such date as the Provincial Government may by notification in the *Official Gazette* appoint in this behalf.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) " bank " means a banking company as defined in section 277F of the Indian Companies Act, 1913, whether incorporated in or outside British India ;

VII of 1913.

(*2*) " business of money-lending " means the business of advancing loans whether or not in connection with or in addition to any other business ;

(*3*) " capital " means a sum of money which a money-lender invests in the business of money-lending ;

(*4*) " company " means a company as defined in the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament, or by Royal Charter or Letters Patent, or by an Act of the Legislature of a British Possession ;

VII of 1913.

(*5*) " co-operative society " means a society registered or deemed to have been registered under the Bombay Co-operative Societies Act, 1925, or the Co-operative Societies Act, 1912, or any Act of any other Provincial Legislature relating to co-operative societies ;

Bom. VII of 1925. II of 1912.

(*6*) " interest " includes any sum, by whatsoever name called, in excess of the principal paid or payable to a money-lender in consideration of or otherwise in respect of a loan, but does not include any sum lawfully charged by a money-lender for or on account of costs, charges or expenses in accordance with the provisions of this Act, or any other law for the time being in force ;

(*7*) " licence " means a licence granted under this Act ;

(*8*) " licence fee " means the fee payable in respect of a licence ;

(*9*) "loan" means an advance at interest by way of credit, whether of money or in kind, but does not include—

(*a*) a deposit of money or other property in a Government Post Office Bank or in any other bank or in a company or with a co-operative society;

(*b*) a loan to, or by, or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public, religious or charitable object; XXI of 1860.

(*c*) a loan advanced by Government or by any local authority authorised by Government;

(*d*) a loan advanced by a co-operative society;

(*e*) a loan to, or by a scheduled bank;

(*f*) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note; XXVI of 1881.

(*g*) except for the purposes of sections 23 and 25, a loan to a trader;

(*10*) "money-lender" means—

(*i*) an individual or

(*ii*) an undivided Hindu family or

(*iii*) a bank or

(*iv*) an unincorporated body of individuals,

who or which—

(*a*) carries on the business of money-lending in the Province; or

(*b*) has his or its principal place of such business in the Province;

(*11*) "prescribed" means prescribed by rules made under this Act;

(*12*) "principal" means in relation to a loan the amount actually advanced to the debtor;

(*13*) "Province" means the Province of Bombay;

(*13A*) "recognised language" means in Greater Bombay Marathi or Gujarati and elsewhere the language of the Court;

(*14*) "register" means a register of money-lenders maintained under section 4;

(*15*) "rules" means rules made under this Act;

(*16*) "scheduled bank" means a bank included in the second schedule to the Reserve Bank of India Act, 1934; II of 1934.

(*17*) "suit to which this Act applies" means any suit or proceeding—

(*a*) for the recovery of a loan made after the date on which this Act comes into force;

(*b*) for the enforcement of any security taken, or any agreement, made after the date on which this Act comes into force in respect of any loan made either before or after the said date; or

(*c*) for the redemption of any security given after the date on which this Act comes into force in respect of any loan made either before or after the said date ;

(*18*) " trader " means a person who in the regular course of business buys and sells goods or other property, whether moveable or immoveable , and includes—

a wholesale or retail merchant,
a commission agent,
a broker,
a manufacturer,
a contractor,
a factory owner,

but does not include an artisan or a person who sells his agricultural produce or cattle or buys agricultural produce or cattle for his use.

Explanation.—For the purposes of this clause an " artisan " means a person who does not employ more than ten workers in a manufacturing process on any one day of the twelve months immediately preceding.

Appointment of Registrar General, Registrars and Assistant Registrars.

3. The Provincial Government may, by notification in the Official Gazette appoint such persons, whether public officers or not, as it thinks proper, to be a Registrar General, Registrars and Assistant Registrars of money-lenders for the purposes of this Act and may define the areas within which each such officer shall exercise his powers and perform his duties.

Register of money-lenders.

4. Every Assistant Registrar shall maintain for the area in his jurisdiction a register of money-lenders in such form as may be prescribed.

Money-lender not to carry on business of money-lending except for area under licence and except in accordance with terms of licence.

5. No money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence.

Application for licence.

6. (*1*) Every money-lender shall annually before such date as may be prescribed make an application in the prescribed form for the grant of a licence to the Assistant Registrar of the area within the limits of which he intends to carry on the business of money-lending. Such application shall contain the following particulars, namely :—

(*a*) the name in which such money-lender intends to carry on business and the name of the person proposed to be responsible for the management of the business ;

(*b*) if the application is by or on behalf of—

(*i*) an individual, the name and address of such individual,

(*ii*) an undivided Hindu family, the names and addresses of the manager and the adult coparceners of such family,

(*iii*) a bank, the names and addresses of the directors, manager or principal officer managing it,

(*iv*) an unincorporated body of individuals, the names and addresses of such individuals;

(*c*) the area and the place or principal place of the business of money-lending in the Province;

(*d*) the name of any other place in the Province where the business of money-lending is carried on or intended to be carried on;

(*e*) whether the person signing the application has himself, or any of the adult coparceners of an undivided Hindu family, or any director, manager or principal officer of the bank or any member of the unincorporated body on behalf of which such application has been made, as the case may be, has carried on the business of money-lending in the Province in the year ending on the 31st day of March immediately preceding the date of the application either individually, or in partnership, or jointly with any other coparcener or any other person and whether in the same or any other name;

(*f*) the total amount of the capital which such person intends to invest in the business of money-lending in the year for which the application has been made.

(*2*) The application shall be in writing and shall be signed—

(*a*) (*i*) if the application is made by an individual, by the individual;

(*ii*) if the application is made on behalf of an undivided Hindu family, by the manager and the adult coparceners of such family;

(*iii*) if the application is made by a bank or unincorporated body by the managing director or any other person having control of its principal place of business in British India or of its place of business in the area in which it intends to carry on the business; or

(*b*) by an agent authorised in this behalf by a power of attorney by the individual money-lender himself, or the family, or the bank or the unincorporated body, as the case may be.

(*3*) The application shall also contain such other particulars as may be prescribed.

Grant of licence and entry in register.

7. On the receipt of an application under section 6 and after making a summary inquiry in accordance with the prescribed procedure, the Assistant Registrar shall forward the application, together with his report, to the Registrar. The Registrar may after making such further inquiry, if any,

as he deems fit, grant the applicant a licence in such form and subject to such conditions as may be prescribed, on payment in the prescribed manner of a licence fee of Rs. 5 and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4.

Refusal of issue of licence.

8. (*1*) The grant of a licence shall not be refused except on any of the following grounds :—

(*a*) that the applicant, or any person responsible or proposed to be responsible for the management of his business as a money-lender is disqualified from holding a licence ;

(*b*) that the applicant has not complied with the provisions of this Act or the rules in respect of an application for the grant of a licence ;

(*c*) that the applicant has made wilful default in complying with or knowingly acted in contravention of any requirement of this Act ;

(*d*) that satisfactory evidence has been produced that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has—

(*i*) knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money-lending, or

(*ii*) been found guilty of an offence under Chapter XVII or section 465, 477 or 477-A of Chapter XVIII of the Indian Penal Code.

XLV of 1860.

(*2*) The Registrar shall, before refusing a licence under sub-section (*1*), record the evidence adduced before him and his reasons for such refusal.

(*3*) An appeal shall lie from an order of the Registrar refusing a licence under sub-section (*1*) to the Registrar General, whose decision shall be final.

Term of licence.

9. A licence shall be valid from the date on which it is granted to the 31st day of July following.

Stay of suits by money-lenders not holding licence.

10. (*1*) After the expiry of six months from the date on which this Act comes into force, no Court shall pass a decree in favour of a money-lender in any suit filed by a money-lender to which this Act applies unless the Court is satisfied that at the time when the loan or any part thereof to which the suit relates was advanced, the money-lender held a valid licence.

(*2*) If during the trial of any such suit, the Court finds that the money-lender had not held such licence, the Court may, on the application of the money-lender, stay the hearing of the suit and require him to produce within a period of three months a licence on payment to the Registrar of all the arrears of the licence fees payable by him under

this Act for the period commencing from the date on which he started the business of money-lending or the expiry of six months from the date on which this Act comes into force, whichever is later, together with such penalty, not exceeding Rs. 500, as the Court may direct:

Provided that when the Court is satisfied that the failure of the money-lender to obtain a licence was due to any reasonable cause, the Court may direct that no penalty as aforesaid or part of such penalty shall be paid by the money-lender.

(*3*) The Court may, on sufficient cause being shown, from time to time extend the period during which the money-lender shall be required to produce a licence.

(*4*) If the money-lender fails to produce the licence required under sub-section (*2*) within the period specified therein or within such period as may be extended under sub-section (*3*), the Court shall dismiss the suit. If the money-lender produces such licence within the aforesaid period, the Court shall proceed to hear the suit.

(*5*) Nothing in this section shall affect—

(*a*) suits in respect of loans advanced by a money-lender before the date on which this Act comes into force;

(*b*) the powers of a Court of Wards, or a manager of an estate taken under management under the Broach and Kaira Incumbered Estates Act, 1881, or the Gujarat Talukdars Act, 1888, or an Official Assignee, a receiver, an administrator or a Court under the provisions of the Presidency-towns Insolvency Act, 1909, or the Provincial Insolvency Act, 1920, or of a liquidator under the Indian Companies Act, 1913, to realise the property of a money-lender. Bom. XXI of 1881. Bom. VI of 1888. III of 1909. V of 1920. VII of 1913.

Entry in register and grant of licence to a money-lender directed to obtain licence under section 10.

11. Any money-lender who is required under sub-section (*2*) of section 10 to produce a licence shall make an application to the Registrar through the Assistant Registrar in the manner specified in section 6 and on receipt of such application the Registrar may, subject to the provisions of section 8, and after making such inquiry as he deems fit, grant the money-lender on payment of the arrears of licence fee, and the penalty, if any, directed by the Court to be paid, a licence in the form and subject to the conditions specified in section 7 and direct the Assistant Registrar to enter the name of the money-lender in the register.

Application for cancellation of licence.

12. (*1*) Any person may, during the currency of a licence, file an application, to the Registrar General for the cancellation of the licence issued to a money-lender on the ground that such money-lender has been guilty of any act or conduct for which the Registrar may under section 8 refuse him the grant of a licence. At the time of filing his application the said person shall deposit such amount not exceeding Rs. 100 as the Registrar General may deem fit.

(2) On the receipt of such application and deposit the Registrar General shall hold an inquiry and if he is satisfied that the money-lender has been guilty of such act or conduct he may direct the Registrar to cancel the licence of the money-lender and may also direct the return of the deposit made under sub-section (1).

(3) If in the opinion of the Registrar General, an application made under sub-section (1) is frivolous or vexatious, he may, out of the deposit made under sub-section (1), direct to be paid to the money-lender such amount as he deems fit as compensation.

Registrar General, Registrar and Assistant Registrar to have powers of Civil Court.

13. For the purposes of section 7 the Registrar and Assistant Registrar, and for the purposes of section 12 the Registrar General, shall have and may exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters :—

V of 1908.

(a) enforcing the attendance of any person and examining him on oath ;

(b) compelling the production of documents and material objects ;

(c) issuing commissions for the examination of witnesses ; and

(d) proof of facts by affidavits.

Court's power to cancel or suspend a licence.

14. (1) (i) A Court passing an order of conviction against a money-lender for an offence under this Act, or

(ii) a Court trying a suit to which this Act applies, if satisfied that such money-lender has committed such contravention of the provisions of this Act or the rules as would, in its opinion, make him unfit to carry on the business of money-lending—

(a) may order that all the licences held by such money-lender in the Province be cancelled or suspended for such time as it may think fit ; and

(b) may, if it thinks fit, declare any such money-lender, or if any money-lender is an undivided Hindu family, a bank or an unincorporated body, such family, bank or body and also any person responsible for the management of the business of money-lending carried on by such family, bank or body, to be disqualified from holding any licence in the Province for such time as the Court may think fit.

(2) Where a Court convicts a money-lender of an offence under this Act, or makes an order or declaration under clause (a) or (b) of sub-section (1), it shall cause the particulars of the conviction, order or declaration, as the case may be, to be endorsed on all the licences held by the money-lender convicted or by any other person affected by the order or declaration and shall cause copies of its order or declaration to be sent to the Registrars by whom the licences were granted for the purpose of entering such particulars in the registers :

Provided that where any licence held by any money-lender is suspended or cancelled or any money-lender is disqualified from holding any licence under this section he may appeal against such order to the Court to which an appeal ordinarily lies from the decision of the Court passing the order; and the Court which passed the order or the Court of appeal may, if it thinks fit, pending the appeal, stay the operation of the order under this section.

(*3*) Any licence required by a Court for endorsement in accordance with sub-section (*2*) shall be produced by the person by whom it is held in such manner and within such time as may be directed by the Court and any person who, without reasonable cause, makes default in producing the licence so required shall be liable, on conviction, to a fine not exceeding Rs. 500 for each day for the period during which the default continues.

(*4*) Powers conferred on a Court under this section may be exercised by any Court in appeal or in revision.

No compensation for suspension or cancellation of licence.

15. Where any licence is suspended or cancelled under this Act, no person shall be entitled to any compensation or the refund of any licence fee.

Persons debarred from doing business during period of suspension or cancellation of licence.

16. A person whose licence has been suspended or cancelled in accordance with the provisions of this Act shall, during the period of suspension or cancellation, as the case may be, be disqualified from holding any licence in the Province.

Person whose licence is suspended or cancelled not to apply without giving particulars of endorsement or of disqualification.

17. No person whose licence has been endorsed under section 14 or who has been disqualified from holding a licence shall apply for, or be eligible to hold a licence, without giving particulars of such endorsement or disqualification.

Duty of money-lender to keep accounts, and furnish copies.

18. (*1*) Every money-lender shall keep and maintain a cash book and a ledger in such form and in such manner as may be prescribed.

(*2*) Every money-lender shall—

(*a*) deliver or cause to be delivered—

(*i*) to the debtor within 30 days from the date on which a loan is made, a statement in any recognised language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the debtor and of the money-lender and the rate of interest charged;

(*ii*) to the Assistant Registrar, within the said period a copy of the said statement;

(*b*) upon repayment of a loan in full, mark indelibly every paper signed by the debtor with words indicating payment or cancellation, and discharge every mortgage, restore every pledge, return every note and cancel or re-assign every assignment given by the debtor as security for the loan.

(*3*) No money-lender shall receive any payment from a debtor on account of any loan without giving him a plain and complete receipt for the payment.

(*4*) No money-lender shall accept from a debtor any article as a pawn, pledge or security for a loan without giving him a plain signed receipt for the same with its description, estimated value, the amount of loan advanced against it and such other particulars as may be prescribed.

Delivery of statement of accounts and copies thereof by money-lender.

19. (*1*) Every money-lender shall deliver or cause to be delivered every year to each of his debtors a legible statement of such debtor's accounts signed by the money-lender or his agent of any amount that may be outstanding against such debtor. The statement shall show—

(*i*) the amount of principal and the amount of interest, separately, due to the money-lender;

(*ii*) the amount of every payment already received by the money-lender in respect of the loan during the year together with the date on which each payment was made;

(*iii*) all payments credited first in the account of interest, and the residue, if any, of any payment more than sufficient to discharge the balance of interest due at the time it is made, credited to the debtor in the account of principal;

(*iv*) the amount of principal remaining unpaid and the interest thereon.

The statement shall be signed by the money-lender, or his agent, and shall be in any recognised language. It shall be in such form and shall be supplied to the debtor on or before such date as may be prescribed.

The money-lender shall on or before the aforesaid date deliver or cause to be delivered a copy of each such statement to the Assistant Registrar.

(*2*) In respect of any particular loan, whether advanced before or after the date on which this Act comes into force, the money-lender shall, on demand in writing being made by the debtor at any time during the period when the loan or any part thereof has not been repaid, and on payment of the prescribed fee supply to the debtor, or if the debtor so requires to any person specified in that behalf in the demand, a statement, in any recognised language, signed by the money-lender or his agent, and containing the relevant particulars specified in sub-section (*1*).

(*3*) A money-lender shall, on a demand in writing by the debtor, and tender of the prescribed sum of expenses, supply a copy of any document relating to a loan made by him or any security therefor to the debtor, or if the debtor so requires to any person specified in that behalf in the demand.

(*4*) For the purposes of this section "year" means the year for which the accounts of the money-lender are ordinarily maintained in his own books.

Debtor not bound to admit correctness of accounts.

20. A debtor to whom a statement of accounts has been furnished under section 19 shall not be bound to acknowledge or deny its correctness and his failure to do so shall not, by itself, be deemed to be an admission of the correctness of the accounts.

Procedure of Court in suits regarding loans.

21. Notwithstanding anything contained in any law for the time being in force, in any suit to which this Act applies—

(*a*) a Court shall, before deciding the claim on merits, frame and decide the issue whether the money-lender has complied with the provisions of sections 18 and 19 ;

(*b*) if the Court finds that the provisions of section 18 or section 19 have not been complied with by the money-lender, it may, if the plaintiff's claim is established, in whole or in part, disallow the whole or any portion of the interest found due, as may seem reasonable to it in the circumstances of the case and may disallow costs.

Explanation.—A money-lender who has given the receipt or furnished a statement of accounts in the prescribed form and manner, shall be held to have complied with the provisions of section 18 or section 19, as the case may be, in spite of any errors and omissions, if the Court finds that such errors and omissions are not material or not made fraudulently.

Provisions of certain sections not to apply to loans made by bank, or unincorporated body exempted by Government.

22. Nothing in sections 18 to 21 shall apply to loans advanced by any bank or unincorporated body which the Provincial Government may by notification in the *Official Gazette* exempt from the operation of those sections.

Power of Court to limit interest recoverable in certain cases.

23. Notwithstanding anything contained in any agreement or any law for the time being in force, no Court shall in respect of any loan whether advanced before or after the date on which this Act comes into force, decree, on account of interest, a sum greater than the principal of the loan due on the date of the decree.

Power of Court to direct payment of decretal amount by instalments.

24. Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court may, at any time, on application of a judgment-debtor, after notice to the decree-holder, direct that the amount of any decree passed against him, whether before or after the date on which this Act comes into force, in respect of a loan, shall be paid in such number of instalments and subject to such conditions, and payable on such dates, as, having regard to the circumstances of the judgment-debtor and the amount of the decree, it considers fit.

V of 1908.

Limitation on rates of interest.

25. (*1*) The Provincial Government may from time to time by notification in the *Official Gazette* fix the maximum rates of interest for any local area or class of business of money-lending in respect of secured and unsecured loans.

Provided that the maximum rate of interest shall not exceed 6 per cent. per annum in the case of secured loans and 9 per cent. per annum in the case of unsecured loans.

(*2*) Notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (*1*) shall be valid and no Court shall in any suit to which this Act applies award interest exceeding the said rates.

Prohibition of charge for expenses on loans by money-lenders.

26. No money-lender shall receive from a debtor or intending debtor any sum other than reasonable costs of investigating title to the property, costs of stamp, registration of documents and other usual out-of-pocket expenses in cases where an agreement between the parties includes a stipulation that property is to be given as security or by way of mortgage and where both parties have agreed to such costs and reimbursement thereof; or where such costs, charges or expenses are leviable under the provisions of the Transfer of Property Act, 1882, or any other law for the time being in force.

IV of 1882.

Notice and information to be given on assignment of loan.

27. (*1*) Where a loan advanced, whether before or after the date on which this Act comes into force, or any interest of such loan or the benefit of any agreement made or security taken in respect of such loan or interest is assigned to any assignee, the assignor (whether he is the money-lender by whom the money was lent or any person to whom the debt has been previously assigned) shall, before the assignment is made—

(*a*) give the assignee notice in writing that the loan interest, agreement or security is affected by the operation of this Act;

(*b*) supply to the assignee all information necessary to enable him to comply with the provisions of this Act; and

(*c*) give the debtor notice in writing of the assignment supplying the name and address of the assignee.

(2) Any person acting in contravention of the provisions of sub-section (1) shall be liable to indemnify any other person who is prejudiced by the contravention.

Application of Act as respects assignees.

28. (1) Save as hereinafter provided, where any debt due to a money-lender in respect of money lent by him whether before or after the date on which this Act comes into force or of interest on money so lent or of the benefit of any agreement made or security taken in respect of any such debt or interest, has been assigned, the assignee shall be deemed to be the money-lender and all the provisions of this Act shall apply to such assignee as if he were the money-lender.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, where for any reason any such assignment is invalid and the debtor has made any payment of money or transfer of property on account of any loan which has been so assigned, the assignee shall in respect of such payment or transfer be deemed to be the agent of the money-lender for all the purposes of this Act.

Reopening of transactions.

29. Notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard *ex parte* or otherwise—

(a) reopen any transaction, or any account already taken between the parties;

(b) take an account between the parties;

(c) reduce the amount charged to the debtor in respect of any excessive interest;

(d) if on taking accounts it is found that the money-lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount:

Provided that in the exercise of these powers, the Court shall not—

(i) reopen any adjustment or agreement purporting to close previous dealings and to create new obligations which have been entered into by the parties or any person through whom they claim at a date more than six years from the date of the suit;

(ii) do anything which affects any decree of a Court.

Explanation.—For the purpose of this section "excessive interest" means interest at a rate which contravenes any of the provisions of section 25.

Inquiry for taking accounts and declaring the amount due.

30. (1) Any debtor may make an application at any time to the Court, whether the loan to which the suit relates has or has not become payable, for taking accounts and for declaring the amount due to the money-lender. Such application shall be in the prescribed form and accompanied by the prescribed fee.

(2) On receipt of such application, the Court shall cause a notice of the application to be given to the money-lender.

(*3*) On the date fixed for the hearing of the application or on such date to which the hearing may be adjourned from time to time, the Court shall make an inquiry and shall after taking an account of the transactions between the parties pass an order declaring the amount, if any, still payable by the debtor to the money-lender, in respect of the principal and interest, if any. In taking accounts under this section the Court shall follow the provisions of sections 18 to 29.

Deposit in Court of money due to money-lender.

31. (*1*) At any time a debtor may tender to a money-lender any sum of money due from him to the money-lender in respect of a loan by way of principal, interest or both.

(*2*) If the money-lender refuses to accept any sum so tendered, the debtor may deposit the said sum in Court to the account of the money-lender.

(*3*) The Court shall thereupon cause written notice of the deposit to be served on the money-lender, and he may, on presenting a petition stating the sum then due in respect of the loan, and his willingness to accept the said sum, receive and appropriate it first towards the interest and the residue if any towards the principal.

(*4*) When the money-lender does not accept the sum, the Court shall appropriate the said sum first towards the interest and the residue if any towards the principal.

Entry of wrong sum in bond etc., to be an offence.

32. (*1*) No money-lender shall take any promissory note, acknowledgment, bond or other writing which does not state the actual amount of the loan, or which states such amount wrongly or execute any instrument in which blanks are left to be filled after execution.

(*2*) Whoever contravenes the provisions of sub-section (*1*) shall, on conviction, be punishable with fine which may extend to Rs. 1,000 or with imprisonment of either description which may extend to six months or with both.

Penalty for molestation.

33. (*1*) Whoever molests, or abets the molestation of, a debtor for the recovery of a debt due by him to a creditor shall, on conviction, be punishable with imprisonment of either description which may extend to three months or with fine which may extend to Rs. 500 or with both.

Explanation.—For the purposes of this section a person who, with intent to cause another person to abstain from doing any act which he has a right to do or to do any act which he has a right to abstain from doing—

(*a*) obstructs or uses violence to or intimidates such other person, or

(*b*) persistently follows such other person from place to place or interferes with any property owned or used by him or deprives him of, or hinders him in, the use thereof, or

(*c*) loiters near a house or other place where such other person resides or works, or carries on business, or happens to be, or does any act calculated to annoy or intimidate such other person,

shall be deemed to molest such other person:

Provided that a person who goes to such house or place in order merely to obtain or communicate information shall not be deemed to molest.

(2) Notwithstanding anything contained in the Second Schedule to the Code of Criminal Procedure, 1898, an offence under this section shall be cognizable. V of 1898.

General provision regarding penalties.

34. Whoever fails to comply with or acts in contravention of any provision of this Act, shall, if no specific penalty has been provided for in this Act, be punishable—

(a) for the first offence with fine which may extend to Rs. 200,

(b) for the second offence with fine which may extend to Rs. 500, and

(c) for any subsequent offence with rigorous imprisonment which may extend to three months and with fine.

Offences by corporations etc.

35. If the person contravening any of the provisions of this Act is an undivided Hindu family or a bank or an unincorporated body, the person responsible for the management of the business of such family, bank or body shall be deemed to be guilty of such contravention.

Arrest and imprisonment in execution of decree for money, against agricultural debtors, abolished.

36. Notwithstanding any law for the time being in force, no debtor who cultivates land personally and whose debts do not exceed Rs. 15,000 shall be arrested or imprisoned in execution of a decree for money passed in favour of a money-lender, whether before or after the date on which this Act comes into force.

Explanation.—"To cultivate personally" has the meaning assigned to it in clause (11) of section 2 of the Bombay Tenancy Act, 1939. Bom. XXIX of 1939.

Every officer to be public servant.

37. Every officer of the Crown acting under the provisions of this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. XLV of 1860.

Provisions of Bom. XXVIII of 1939 saved.

38. Nothing in this Act shall affect any of the provisions of the Bombay Agricultural Debtors Relief Act, 1939, and no Court shall entertain or proceed under this Act with any suit or proceeding relating to any loan in respect of which debt adjustment proceedings can be taken under the said Act. Bom. XXVIII of 1939.

Rules.

39. (1) The Provincial Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all or any of the following matters:—

(a) the form of the register under section 4;

(*b*) the form of the application for a licence and the further particulars to be included therein under section 6 ;

(*c*) the form and conditions of the licence, the manner of payment of licence fee and the procedure for a summary inquiry under section 7 ;

(*d*) the form of cash book and ledger and the manner in which they should be maintained under sub-section (*1*), and the other particulars to be prescribed under sub-section (*4*), of section 18 ;

(*e*) the form of the statement of accounts to be furnished and the date before which it is to be furnished under sub-section (*1*), the fee to be paid under sub-section (*2*), and the sum of expenses to be paid under sub-section (*3*), of section 19 ;

(*f*) the form of application and the fee to be paid under sub-section (*1*) of section 30 ;

(*g*) any other matter which is or may be prescribed under this Act or any matter for which there is no provision or insufficient provision in this Act and for which provision is, in the opinion of the Provincial Government, necessary for giving effect to the provisions of this Act.

(*3*) The rules made under this section shall, subject to the condition of previous publication, be published in the Official Gazette.

(*4*) The rules made under this section shall be laid before each Chamber of the Provincial Legislature at the session thereof next following and shall be liable to be modified or rescinded by a resolution in which both Chambers concur and such rule shall, after notification in the Official Gazette, be deemed to have been modified or rescinded accordingly.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XV OF 1946.]

(As read for the third time and passed by the Legislative Assembly on the 11th February 1947.)

(As read for the third time and passed by the Legislative Council on the 28th February 1947.)

A Bill to regulate the transactions of money-lending in the Province of Bombay

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[Mr. MORARJI R. DESAI, M.L.A.]

MO-II Bk Hb 323—2

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